STATE OF MICHIGAN

IN THE SUPREME COURT

DEAN ALTOBELLI,

Plaintiff/Appellee/Cross-Appellant

v

MICHAEL W. HARTMANN, MICHAEL P. COAKLEY, ANNA M. MAIURI, JOSEPH M. FAZIO, DOUGLAS M. KILBOURNE, JOHN D. LESLIE, AND JEROME R. WATSON,

Defendants/Appellants/Cross-Appellees.

Supreme Court No. 150656

Court of Appeals Docket No. 313470

Ingham County Circuit Court Case No. 12-635-CZ

_____/

NOTICE OF HEARING

PLAINTIFF/CROSS-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

CERTIFICATE OF SERVICE

MARK GRANZOTO, P.C.

MARK GRANZOTTO (31492)
Attorney for Plaintiff/Cross-Appellant
2684 Eleven Mile Road, Suite 100
Berkley, MI 48072
(248) 546-4649

DEAN ALTOBELLI (P48727)
Attorney for Plaintiff/Cross-Appellant
1720 6th Avenue South
Escanaba, MI 49829
(517) 281-0141

STATE OF MICHIGAN

IN THE SUPREME COURT

DEAN ALTOBELLI,

Plaintiff/Appellee/Cross-Appellant

v

MICHAEL W. HARTMANN, MICHAEL P. COAKLEY, ANNA M. MAIURI, JOSEPH M. FAZIO, DOUGLAS M. KILBOURNE, JOHN D. LESLIE, AND JEROME R. WATSON,

Defendants/Appellants/Cross-Appellees.
_____/

Supreme Court No. 150656

Court of Appeals Docket No. 313470

Ingham County Circuit Court
CASE NO. 12-635-CZ

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff/Cross-Appellant's Application for Leave to Appeal will be brought on for hearing on February 3, 2015.

MARK GRANZOTO, P.C.

/s/ Mark Granzotto
MARK GRANZOTTO (31492)
Attorney for Plaintiff/Cross-Appellant
2684 Eleven Mile Road, Suite 100
Berkley, MI 48072
(248) 546-4649

/s/ Dean Altobelli
DEAN ALTOBELLI (P48727)
Attorney for Plaintiff/Cross-Appellant
1720 6th Avenue South
Escanaba, MI 49829
(517) 281-0141

Dated: January 12, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER

ORDER BEING APPEALED FROM AND RELIEF REQUESTED

Plaintiff/Cross-Appellant, Dean Altobelli, seeks leave to appeal from the Michigan Court of Appeals decision dated November 4, 2014. A copy of that decision is attached as Exhibit 1. That opinion reversed in part a circuit court order granting partial summary disposition in favor of Mr. Altobelli.

Plaintiff requests that this Court grant leave to appeal to consider an important legal question presented in this case. Alternatively, plaintiff requests that the Court summarily reverse the Court of Appeals November 4, 2014 decision and remand this matter to the Ingham County Circuit Court for further proceedings.

STATEMENT OF QUESTIONS PRESENTED

I. SHOULD THIS COURT GRANT LEAVE TO APPEAL TO CONSIDER WHETHER SECTION 509 OF THE MICHIGAN LIMITED LIABILITY COMPANY ACT, MCL 450.4509, PROTECTS AN OWNER'S PROPERTY RIGHTS IN A LIMITED LIABILITY COMPANY FROM CLAIMS OF IMPLIED WITHDRAWAL BY REQUIRING COMPLIANCE WITH A METHOD OF WITHDRAWAL PROVIDED IN AN OPERATING AGREEMENT?

Plaintiff/Cross-Appellant says "Yes"

Defendants/Cross-Appellees say "No"

II. ALTERNATIVELY, SHOULD THIS COURT SUMMARILY REVERSE THE COURT OF APPEALS DECISION MISINTERPRETING SECTION 509 OF THE MICHIGAN LIMITED LIABILITY COMPANY ACT?

Plaintiff/Cross-Appellant says "Yes"

Defendants/Cross-Appellees say "No"

III. SHOULD THIS COURT REVIEW WHETHER THE COURT OF APPEALS ERRED IN "CLARIFYING" WHAT CONDUCT WOULD CONSTITUTE A VOLUNTARY WITHDRAWAL OF AN OWNERSHIP INTEREST UNDER THE OPERATING AGREEMENT?

Plaintiff/Cross-Appellant says "Yes"

Defendants/Cross-Appellees say "No"

INTRODUCTION

This case involves a dispute over Dean Altobelli's ownership position in a law firm, Miller Canfield, Paddock and Stone, P.L.C. (hereinafter "Miller Canfield" or "the firm"), a Michigan professional limited liability company. Mr. Altobelli claims that defendants, some of whom were managers at Miller Canfield in July 2010, wrongfully deprived him of his ownership rights without a vote of the firm's owners.[1] Defendants assert that Mr. Altobelli impliedly gave up his ownership position in the firm. This case raises a significant question regarding the appropriate interpretation of MCL 450.4509, a provision in Michigan's Limited Liability Company Act ("LLCA"), MCL 450.4101 *et seq*, governing ownership and property rights in a limited liability company.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Prior to 1993, Miller Canfield was operated as a partnership. In December 1993, the senior partners of that partnership approved the firm's conversion into a Michigan professional limited liability company. In December 1995, the owners (known as members under the LLCA) of that limited liability company entered into an Amended And Restated Operating Agreement (hereafter "Operating Agreement"). A copy of the Operating Agreement is attached as Exhibit 2. Under the terms of that document, the members of the firm for purposes of the LLCA were identified as Principals. Operating Agreement (Exhibit 2), ¶¶2-3. The Operating Agreement identified two types of Principals, Senior Principals, who had additional voting rights in firm affairs as well as an equity interest in the firm's profits or losses, and a separate category designated as "Other Principals"

[1] Mr. Altobelli did not sue all individuals who were managers at the time his ownership rights were cut off, and two of the named defendants, Anna Maiuri and Michael Coakley, were not managers at the time his ownership rights were cut off. .

Between 1995 and 2004, the Operating Agreement was amended four times. The Second Amendment, which was adopted in December 2001, is relevant to the issue raised in this application and is attached as Exhibit 3.

Mr. Altobelli was an attorney at Miller Canfield for 17 years, from 1993 until July 31, 2010. Verified First Amended Complaint, ¶5. At the end of 2005, the one hundred plus Senior Principals of the firm unanimously voted to grant Mr. Altobelli an ownership position in the firm, naming him a Senior Principal. *Id*., ¶16.

Mr. Altobelli had a long background in athletics and particularly football. In late May or early June 2010, Mr. Altobelli was offered a temporary opportunity to spend time at the University of Alabama athletic program. *Id.*, ¶66. Mr. Altobelli was intrigued with the opportunity not only due to his interest in athletics, but he also viewed this temporary opportunity as a potential source of new business for the firm. *Id*., ¶68.

In June 2010, Mr. Altobelli submitted a proposed leave of absence to Michael Hartmann, who was at the time the firm's CEO. Id., ¶69. Initially, Hartmann promised to work out the details of a leave of absence and Mr. Altobelli relied on those representations to commit time to the University of Alabama. *Id*., ¶¶70-71. Mr. Altobelli then invested hundreds of hours to ensure that all of his client business remained with the firm. *Id*., ¶73.

Hartmann later reneged on his promise to work out the details of a leave of absence and, instead, advised Mr. Altobelli that he wanted him to withdraw from the firm. *Id*., ¶75-76. On July 7, 2010, Hartmann sent an email to Mr. Altobelli directing him to submit a written resignation. *Id.*, ¶79. The practice at Miller Canfield at the time was to obtain a written notice of withdrawal from any Principal who was willing to voluntarily withdraw his or her ownership position in the firm. *Id*., ¶160. By email, Mr. Altobelli responded to Hartmann's request by

flatly refusing to withdraw stating "I have no plans to resign from the firm." Pursuant to a provision in the Operating Agreement governing expulsion of Principals, Mr. Altobelli requested a vote of the owners as to the termination of his ownership interest ("I also request a vote of the partnership on this matter").

On July 8, 2010, Mr. Altobelli sent another email to the managers further responding to Mr. Hartmann's July 7 email and informing them that "it is inaccurate to state that 'it is not my plan to return to the firm next year.'" Mr. Altobelli pointed out that his hours and revenue contributions for the calendar year already constituted the full time practice of law by standards historically accepted by the firm and that over the course of the two year cycle used by the firm, he would be well within firm averages. Under the Operating Agreement, the owners' contributions for purposes of allocating ownership shares are evaluated on a biannual basis ending in odd number years. After the first year of the 2010-2011 cycle, Mr. Altobelli had already contributed over two times more revenue and over a 1000 more hours than some other Senior Principals.

After the managers failed to act on his request for nominal outside income, Mr. Altobelli arranged to volunteer his time at the University of Alabama. At the same time, Mr. Altobelli took steps to maintain his practice while he spent time at Alabama . *Id*., ¶¶90-91. He informed both Hartmann and Michael Coakley, head of the firm's litigation group, of his plan to volunteer his time at the University of Alabama while maintaining his practice. *Id*., ¶¶91-92. On July 20, 2010, Mr. Altobelli submitted a 12 page statement that Senior Principals were to provide on an annual basis, describing his contributions to the firm and the contributions he planned to continue making during the 2011 evaluation year. *Id.*, ¶92**.**

On July 21, 2010, Hartmann telephoned Mr. Altobelli. The substance of that conversation has been the subject of some dispute between the parties. According to Mr. Altobelli, during this conversation, Hartmann advised him that the managers had decided that they would terminate his ownership as of July 31, 2010. *Id*., ¶93. Mr. Altobelli reaffirmed during this conversation that he refused to voluntarily withdraw as a Senior Principal and he again demanded a vote of all of the firm's Senior Principals on any attempt to expel him as an owner. *Id.,* ¶100. Mr. Altobelli also advised Hartmann that he and the managers lacked the authority to unilaterally terminate his ownership interest. On July 22, 2010, Mr. Altobelli sent an email to the managers stating that he disagreed with their decision and their authority to terminate his ownership position. *Id*., ¶108.

On July 23, 2010, Hartmann sent an email disputing Mr. Altobelli's version of the July 21 conversation and asserting that he told Mr. Altobelli that the firm would consider him to have withdrawn from the firm as of July 31, 2010. On July 29, 2010, Hartmann sent an email to Mr. Altobelli indicating that the defendants unilaterally elected to treat Mr. Altobelli as voluntarily withdrawing from the Firm.

Defendants cut off all of Mr. Altobelli's ownership rights effective July 31, 2010, including profit distributions and voting rights.[2] Despite this fact, Mr. Altobelli continued to contribute to the firm throughout 2010 by advising Miller Canfield attorneys on client matters and helping them to develop case strategies. *Id*., ¶¶98, 116, 122-123, 130. Mr. Altobelli accepted nominal pay for a temporary, intern-like position at Alabama only *after* Defendants deprived him of his rights on July 31, 2010.

[2] On Saturday July 31, 2010, the day defendants terminated his ownership rights, Mr. Altobelli worked over 10 hours to generate revenues and preserve business for himself and others at the firm. Id, ¶46.

Defendants never informed the other owners of the dispute over Mr. Altobelli's ownership position, Mr. Altobelli's demands for a vote of the owners or defendants' decision to unilaterally terminate Mr. Altobelli's ownership rights without a vote.

Mr. Altobelli filed suit against defendants in the Ingham County Circuit Court in July 2012. In his complaint, Mr. Altobelli alleged that defendants wrongfully deprived him of his ownership rights in the firm. The allegations contained in Mr. Altobelli's complaint call into question several provisions of the firm's Operating Agreement.

Paragraph 2.8 of the Operating Agreement vests the firm's six managers with "sole, full and complete power and authority to manage the affairs of the Firm…" This grant of authority, however, is subject to several explicit exceptions described in ¶2.8(a) – (i) See Exhibit 2, ¶2.8; see also Second Amendment (Exhibit 3), ¶2.8(a) – (c). One of these exceptions governs the expulsion of a Principal as provided in paragraph 2.8(c). With the exception of International Principals, an expulsion can only occur through a vote of a two-thirds supermajority of the firm's Senior Principals:

> "The *expulsion* of a Principal of the Firm, which may be initiated by the Managing Directors, *shall become effective only if approved by the vote or written consent of not less than two-thirds (2/3) of the persons who are then Senior Principals*; provided, however…in the event that any person who is a Classified International Principal ceases to be a partner in good standing (as determined by the Managing Directors) of Wilson Walker Hochberg Slopen LLP…whether by reason of death, permanent disability, resignation, expulsion or for any or no reason whatsoever, said *person shall automatically and without need of any vote or other action be deemed to have ceased his or her status as an International Principal of the Firm*."

Second Amendment (Exhibit 3), ¶2.8(c) (emphasis added).

Paragraph 2.29 of the Operating Agreement addresses Voluntary and Involuntary Withdrawal of a Principal and provides in relevant part:

> A Principal may voluntarily withdraw from the Firm at any time and shall withdraw involuntarily in the event two-thirds (2/3) of the persons who are then Senior Principals vote in favor of such withdrawal, as provided in Section 2.8 hereof. A Principal shall be deemed to have voluntarily withdrawn from the Firm upon such Principal's death.

Operating Agreement (Exhibit 2), ¶2.29.

Paragraph 2.34 of the Operating Agreement, which addresses the participation of certain professional corporations as Principals, also contains some language describing a Principal's voluntary withdrawal from the firm. Paragraph 2.34 provides in relevant part:

> (b) Any individual who was a Principal in the Firm and who became an employee of such professional corporation shall no longer be a Principal in the Firm for any purpose whatsoever from and after the effective date of admission of such professional corporation, and such individual shall be deemed to have voluntarily withdrawn as a Principal in the Firm…
>
> (c) Any principal which is a professional corporation may elect by advance written notice delivered to the Managing Director to withdraw from the Firm effective as of the date specified in such notice. There shall automatically be substituted in the place of the withdrawing corporate principal, as a Principal in the Firm, the individual attorney-shareholder of such withdrawing professional corporation.

Id., §2.34.

Paragraph 2.33(b) requires the Managers to inform the owners of problems that arise and provides as follows:

> The Managing Directors shall keep the Principals currently advised of all significant decisions made and problems encountered, to the end that the Principals shall be informed of all developments significant to the welfare of the Firm.

Id., §2.33(b).

In July 2012, Mr. Altobelli moved for partial summary disposition as to liability on several of his theories. At the core of each of these theories was Mr. Altobelli's claim that defendants wrongfully deprived him of his ownership rights without a vote of the firm's owners.

Mr. Altobelli claimed that defendants, few in number, usurped the power of the other owners by unilaterally expelling him without obtaining a two-thirds vote of approval from the then one hundred plus owners of the firm as required by §2.8(c) of the Operating Agreement.

In response to Mr. Altobelli's motion, defendants asked the circuit court to recognize a novel principle of Michigan law - implied withdrawal of ownership in a limited liability company. Defendants argued that questions of fact existed on whether Mr. Altobelli impliedly withdrew his ownership position in the firm.

The circuit court rejected defendants' theory of implied withdrawal as a matter of law. Recognizing that the Michigan LLCA protects an owner's property rights in a LLC, the circuit court held that a voluntary withdrawal of ownership could only be accomplished by complying with a method of withdrawal set out in an operating agreement.

The circuit court found that Mr. Altobelli did not withdraw his ownership position by a method prescribed in the Operating Agreement and as a result he "could not be deemed to have voluntarily waived his ownership rights in the firm." The circuit court further held that "Defendants acted outside of their authority by depriving Plaintiff of his ownership interest in the Firm" without the two-thirds vote of Senior Principals required by the Operating Agreement. The circuit court granted Mr. Altobelli partial summary disposition on his shareholder oppression, conversion, and tortious interference claims.

The defendants applied for leave to appeal in the Michigan Court of Appeals, which, on April 16, 2013, issued an order granting that application. In a published decision dated November 4, 2014, the Court of Appeals reversed that part of the circuit court's decision granting partial summary disposition to Mr. Altobelli. A copy of the Court of Appeals decision is Exhibit 1 to this application.

The Court of Appeals indicated that whether Mr. Altobelli could prevail on his claim that he was wrongfully deprived of his ownership rights without a vote of the firm's Senior Principals hinged on the interpretation of §509 of the LLCA, MCL 450.4509. Section 509 currently states that "a member may withdraw from a limited liability company only as provided in an operating agreement." The circuit court had predicated its ruling granting partial summary disposition in favor of Mr. Altobelli on the fact that the Operating Agreement was completely silent on a mechanism by which an individual Principal could voluntarily withdraw his/her ownership position in the firm.

The circuit court granted partial summary disposition to Mr. Altobelli based on its conclusion that §509 of the LLCA required that voluntary withdrawal of a member's ownership interest may occur only where the operating agreement specifies the manner by which such a voluntary withdrawal is to take place. The Court of Appeals found that this interpretation of §509 of the LLCA had "no basis in the plain language of the statute" as it reversed the grant of partial summary disposition:

> We find that the circuit court's interpretation of MCL 450.4509(1) and of the Operating Agreement is legally incorrect. The statute provides that "A member may withdraw from a limited liability company *only as provided in an operating agreement* " (emphasis added). The circuit court interpreted the statutory language "only as provided in an operating agreement" to mean that the operating agreement must provide a specific method or procedure for voluntary withdrawal. Absent specified means and procedures, the court reasoned, there can be no voluntary withdrawal.
>
> Contrary to the trial court's interpretation, the 1997 statutory amendment's removal of a member's ability to withdraw through written notice does not compel the conclusion that there can be no voluntary withdrawal where an LLC's operating agreement does not provide a specified procedure for withdrawal. Such a conclusion has no basis in the plain language of the statute. Reviewing the relevant statutory language, we glean no verbiage to cause this Court to conclude that an LLC's operating agreement cannot permit voluntary withdrawal without delineating any conditions precedent in its operating agreement. To require such conditions or procedural steps forces an LLC to insert something into its operating agreement that perhaps none of its members may find desirous. Consequently, we read the "only as provided" language to mean that a member

> can no longer withdraw unless an operating agreement permits withdrawal. We therefore conclude that the circuit court erred in its interpretation and application of MCL 450.4509(1), and thus, erred in its conclusion that plaintiff could not have voluntarily withdrawn from the Firm.

Opinion (Exhibit 1), at 13.

After rejecting the circuit court's conclusion that a voluntary withdrawal had to be in a manner prescribed by the Operating Agreement, the Court of Appeals proceeded to determine whether, under the particular facts of this case, Mr. Altobelli could be said to have "voluntarily" withdrawn from the firm. Based on a dictionary definition of the word "voluntary" and an affidavit submitted by Hartmann in response to Mr. Altobelli's motion for partial summary disposition, the Court of Appeals concluded that factual issues remained on the central question of whether Mr. Altobelli withdrew from the firm:

> Viewed in a light most favorable to defendants, we find the above-cited affidavits leave open a genuine issue of material fact regarding whether plaintiff voluntarily withdrew from the firm—i.e. whether plaintiff left the Firm of his own accord and by his own free choice without compulsion or obligation. In the event that he did, there would have been no need for a vote of the senior principals to expel him. The circuit court's determination that the vote was required, the lack of that vote, and the declaration in MCL 450.4504(1) that membership interest in an LLC is personal property, were the basis on which the circuit court granted partial summary disposition on the shareholder oppression, conversion and tortious interference with a business expectancy claims. Because there was a genuine issue of material fact regarding whether plaintiff voluntarily left the firm, summary disposition was inappropriate.

Id., at 16.

ARGUMENT

I. THE COURT SHOULD GRANT LEAVE TO APPEAL TO CONSIDER AN ISSUE OF FIRST IMPRESSION IN MICHIGAN ON THE MEANING OF MCL 450.4509, A STATUTE GOVERNING OWNERSHIP RIGHTS IN A LIMITED LIABILITY COMPANY.

The Court of Appeals November 4, 2014 published decision establishes new law in Michigan and raises a question of statutory interpretation that has never been presented to this Court. MCL 450.4509 governs the cessation of ownership in a LLC and its meaning affects every person who is or becomes an owner of a LLC in Michigan. For the reasons that follow, the Court should grant leave to appeal to consider this important question of Michigan law.

A. The history of MCL 450.4509.

Michigan's Limited Liability Company Act, MCL 450.4101 *et seq* (LLCA) was originally enacted in 1993. Prior to a 1997 amendment, §509 of the LLCA provided:

> A member may withdraw from a limited liability company *as provided in an operating agreement or by giving written notice to the company and to the other members at least 90 days in advance of the date of withdrawal*, but if the withdrawal violates an operating agreement, the withdrawing member is not entitled to the distributions provided for in section 305 and the company may recover from the withdrawing member damages for breach of the agreement in excess of the amount that would otherwise be distributable to the withdrawing member under section 305. (emphasis added)

Thus, as originally enacted, the LLCA provided two methods by which a member could withdraw from a LLC - either by giving written notice to the LLC and to the other members at least 90 days in advance of the date of withdrawal or by any alternative method set out in an operating agreement.

In a 1997 amendment to the LLCA, the Legislature revised §509. In its amended form, §509 now provides:

1. A member may withdraw from a limited liability company *only as provided in an operating agreement*. A member withdrawing pursuant to an operating agreement may become entitled to a withdrawal distribution as described in Section 305.

2. An operating agreement may provide for the *expulsion* of a member or for *other events the occurrence of which will result in a person ceasing to be a member* of the limited liability company. (emphasis added)

The 1997 amendment to §509 deleted the statutory method to unilaterally withdraw provided in the 1993 version of the LLCA; it eliminated withdrawal based on a written notice given by the withdrawing member. In doing so, the 1997 amendment allowed for withdrawal "only as provided in an operating agreement." The effect of this legislative change has been described by one of the leading commentators on Michigan's LLCA as follows: "Under Michigan law, a member of an LLC does not have a statutory right to withdraw from the LLC and may only withdraw as provided in the operating agreement. If the operating agreement does not permit withdrawal, there is no right for a member to withdraw . . ." Cambridge *Minority Member Oppression,* Mich Business L.J. (Spring 2007), at 11.

In addition to voluntary withdrawal "as provided in an operating agreement," the 1997 amendment to §509 added another subsection, §509(2), which provided two other mechanisms by which an ownership interest in a LLC could be extinguished, expulsion and automatic withdrawal by events provided for in an operating agreement.[3]

B. The significance of the 1997 amendment to MCL 450.4509.

While not addressed by the Court of Appeals in its November 4, 2014 opinion, there is a significant question as to whether the 1993 or 1997 version of §509 governed this case. The Operating Agreement was formed in 1995 when the pre-1997 version of the statute was in effect.

[3] While not applicable to Mr. Altobelli's situation, it is noteworthy that the Operating Agreement at issue here contains provisions which correspond to the methods of withdrawal covered by §509(2). The Operating Agreement calls for the expulsion of a Principal upon a vote of two-thirds of the Senior Principals. Operating Agreement (Exhibits 2, 3), ¶¶2.8(c). In addition, the Operating Agreement calls for the automatic termination of a Principal's ownership interest upon his/her death, Exhibit 2, ¶2.29, the admission of a Principal's professional corporation as a substitute for the individual principal, *id*., ¶2.34(b), or where an International Principal ceases to be a partner in good standing with his/her international firm. Exhibits 3, ¶2.8(c).

This Court recently addressed the question of whether an existing contractual relationship can be affected by the amendment of a statute that touches on one of the provisions in the parties' contract. In *LaFontaine Saline, Inc. v Chrysler Group, LLC*, 496 Mich 26; 852 NW2d 78 (2014), this Court reinforced the fact that "the obligation of a contract consisted in its binding force on the party who makes it. *This depends upon the laws in existence when it is made.*" *Id*., at 35 (emphasis in original). This Court's holding in *LaFontaine*, therefore, offers support for the conclusion that the 1993 version of §509 would control the withdrawal issue raised in this case and, under the pre-amendment version of §509, Mr. Altobelli or any other owner could withdraw from the firm either "as provided in the operating agreement" or by giving 90 day advance written notice to the firm and to the other owners.

Ultimately, resolution of the question of whether the 1993 or 1997 version of §509 controls in this case is unnecessary since the result under both is the same. As noted, the difference between the two versions of §509 is that the earlier statute provided a specific procedure to voluntarily withdraw – advance written notice. While Mr. Altobelli was certainly asked to submit a written notice of withdrawal, the fact is he expressly refused to do so because he was unwilling to voluntarily give up his ownership position, and he instead invoked the expulsion provisions in the Operating Agreement by demanding a vote. Thus, Mr. Altobelli did not satisfy the statutory procedure for withdrawal provided in the 1993 version of §509 and it is irrelevant here whether the pre-1997 or post-1997 version of §509 governs. Under either version, the question is whether he withdrew from the firm "as provided in an operating agreement."

While the 1997 amendment of §509 does not affect the outcome of this case, it does serve to explain why the Operating Agreement fails to provide a mechanism by which an individual

Principal could voluntarily withdraw. At the time the Operating Agreement was written, there was a statutorily prescribed mechanism for a Principal to voluntarily withdraw– submitting a written notice to the LLC and to the other members. And the undisputed evidence presented in this case demonstrates that the routine practice within the firm was for a Principal who elected to voluntarily withdraw to submit a written notice of withdrawal.

Because §509 provided a method for voluntarily withdrawing when the Operating Agreement was formed in 1995, there was no reason at that point in time to put an alternative mechanism for voluntary withdrawal in the Operating Agreement. In 1997, however, the Legislature deleted the statutory mechanism from §509, and the Operating Agreement's voluntary withdrawal language was never changed to take this amendment into account. In other words, the voluntary withdrawal language in the Operating Agreement remained as it had been under the 1993 version of §509 – it indicated that a Principal *may* withdraw from the LLC, but it was completely silent on the question of how that voluntary withdrawal was to be accomplished.

The Court of Appeals assumed that the post-1997 version of §509 applied and that a Principal could no longer withdraw from the firm by the procedure prescribed in the 1993 version of §509. What the Court of Appeals proceeded to do in this case was to remedy the omission of any alternative method in the Operating Agreement by establishing a principle of "implied" withdrawal. In the absence of a procedure to effectuate a voluntary withdrawal within the Operating Agreement, the Court of Appeals' adopted a principle of implied withdrawal that allows managers to pick and choose on a case-by-case basis whether a Principal had "impliedly" withdrawn his or her ownership position in the firm. On that basis, the Court of Appeals ruled that the evidence presented created a question of fact on the central question of whether Mr. Altobelli "voluntarily" withdrew his ownership position.

The notion that any manager possesses the power to circumvent the expulsion procedures in the Operating Agreement by unilaterally construing certain conduct on the part of a firm's Principal as an implied withdrawal of that Principal's ownership interest is inconsistent with both the Operating Agreement and the LLCA. Managers derive their authority from the owners and the LLCA expressly states that the authority of managers may be restricted by an operating agreement. MCL 450.4402. Paragraph 2.8(c) of the Miller Canfield Operating Agreement clearly and explicitly denies managers the power to expel a Principal without a two-thirds vote with one exception relating to International Principals who are partners or employees of Canadian and Polish firms. The managers can expel an International Principal "without the need of any vote" if they determine that an International Principal is not in "good standing" in his/her Canadian or Polish firm. See Second Amendment to Operating Agreement (Exhibit 3), ¶2.8(c). This one exception confirms that managers may not unilaterally cut off the ownership rights of any domestic Principal without a vote of the owners.[4]

The Operating Agreement does not define any other events where a principal shall *automatically* be *deemed* to have ceased his Principal status "without the need of any vote." Defendants lack authority to impose *automatic* withdrawal on other principals. If defendants had discretion to define other events of *automatic* withdrawal, there would have been no need to define death as an event of withdrawal, no need to define the admission of a Principal's professional corporation as an event of automatic withdrawal, and no need to provide for the automatic withdrawal of an International Principal. See fn. 3, *supra.* No one can pick and

[4] In the context of a LLC, "expel" means to cut off a person's membership rights. See Random House Webster's Dictionary Unabridged, 2nd Ed (expel means "to cut off from membership or relations"); see also Meriam Webster's Collegiate Dictionary 11th Edition 2012 (expel means "take away rights or privileges of membership").

choose other events constituting *automatic* withdrawal, especially during the middle of a dispute with a Principal who refused to withdraw and demanded a vote.

Indeed, the LLCA defines an owner's membership interest as personal property like stock in a corporation or an interest in a partnership. See MCL 450.4504; MCL 450.5103. Like other property and subject to restrictions in an operating agreement, a membership interest can be transferred by assignment or by way of inheritance. A membership interest is not impliedly extinguished by the death of a member, unless an operating agreement says a membership interest ceases upon death. Process protects against the wrongful deprivation of property rights and that is why the law generally requires that a person cannot be deprived of his or her property unless it is transferred through a formal procedure. Important property rights are not transferred through implication.

If members of a LLC fail to provide a method to expel an owner or if they fail to define events of *automatic* withdrawal, *"there will be no method of expelling a member no matter how bad the circumstances become." MI Limited Liability Co,* Ch 6, IV, F, Withdrawal or Expulsion of Member, §§ 6.31-6.32 (ICLE 2012) (emphasis added). Under the ruse of implied withdrawal, defendants unilaterally expelled Mr. Altobelli by cutting off his membership rights on July 31, 2010 on their own view that his ownership rights should be terminated.

C. The Court of Appeals' concept of implied withdrawal contradicts the plain language of MCL 450.4509.

The Court of Appeals determination that withdrawal from a LLC can be implied under circumstances that are not provided for in an operating agreement seriously misconstrues §509 and introduces a whole new level of uncertainty into an area of the law that demands both certainty and predictability.

The circuit court determined that §509's statement that a member may withdraw from an LLC "only as provided in an operating agreement" meant that the operating agreement must identify the manner in which such a withdrawal can occur. The Court of Appeals announced that this interpretation "has no basis in the plain language of the statute." Opinion (Exhibit 1), at 13. The Court of Appeals was wrong. The plain language of the statute supports the conclusion reached by the circuit court – a member may withdraw from a LLC only in a manner provided in an operating agreement.

The Court of Appeals subtly, but significantly, rewrote the statute to reach the conclusion it did. According to the Court of Appeals, the "only as provided" language of §509(1) merely means that "a member can no longer withdraw *unless* an operating agreement permits withdrawal." *Id*. (emphasis added). Thus, the Court of Appeals held that the first sentence of §509(1) means that a member may voluntarily withdraw only *if* the operating agreement allows such a withdrawal.

The problem with this interpretation is that, if this had actually been the intent of the Legislature in enacting §509, the statute could easily have been written differently to convey this point. If the first sentence of §509 means that voluntary withdrawal is allowed only if the Operating Agreement allows it, that sentence could simply read: "A member may withdraw from a limited liability company only *if* provided in an operating agreement." But, that is not how §509 is written. It allows a member to withdraw only *as* provided in an operating agreement.

Further support for plaintiff's position that §509 requires that the operating agreement provide the manner of withdrawal is supplied by the language chosen by the Legislature for that section when it was originally enacted in 1993. As noted previously, when originally adopted,

the first sentence of that statute provided that "a member may withdraw from a limited liability company as provided in an operating agreement ***or*** by giving written notice to the company and to the other members at least 90 days in advance of the date of withdrawal . . ." (emphasis added). The disjunctive word "or" is significant in that it is used to indicate an alternative. *People v Kowalski*, 489 Mich 488, 499, n. 11; 803 NW2d 200 (2011); *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 148; 783 NW2d 133 (2010) ("In general, 'or' is a disjunctive term, indicating a choice between two alternatives.")

Thus, properly read, the 1993 version of §509 offered an alternative as to how an owner may voluntarily withdraw from a LLC. Voluntary withdrawal could occur either "as provided in an operating agreement" *or* by providing advanced written notice. But, what is of significance for purposes of interpreting §509 is that one of the two "alternatives" provided in the 1993 version is without question a description of the *mechanism* by which such withdrawal is to be effectuated, *i.e.* through a written withdrawal.

The two phrases used in the 1993 version of that statute are separated by the disjunctive "or" must represent alternatives, *Kowalski, supra*. Since one of these two alternatives represents the *mechanism* of a withdrawal from a LLC, it stands to reason that the other alternative – withdrawal "as provided in an operating agreement" – must also refer to the *mechanism* by which a withdrawal is to take place. This Court has recognized this basic principle of statutory interpretation in the doctrine known as *noscitur a sociis* – a word or phrase in a statute is given meaning by its context. Thus, the Court has held that "when construing a series of terms . . . we are guided by the principle that *words grouped in a list should be given related meaning*." *In Re Complaint of Rovas*, 482 Mich 90, 114; 754 NW2d 259 (2008) (emphasis added); *Griffith v State Farm Mutual Auto Ins Co*, 472 Mich 521, 533; 697 NW2d 895 (2005).

Applying this contextual approach leads to the conclusion that the phrase allowing withdrawal from a LLC "as provided in operating agreement" as used in the 1993 version of §509 must refer to the mechanism by which such a withdrawal is to be accomplished. And, since the Legislature used precisely the same wording in 1997 when it amended §509, this language should be given identical meaning. Thus, contrary to the conclusion reached by the Court of Appeals, §509(1) in its present form provides that a member may withdraw from an LLC only through a method provided in an operating agreement.

Such an interpretation of §509 is also supported by basic rules of grammar. The phrase "as provided in an operating agreement" is a subordinating adverbial clause modifying the verb phrase "may withdraw." The word "as" operates as a subordinating conjunction and when used as a conjunction means "in the same manner that, according to the way that." *Webster's New World College Dictionary, 4th Ed 2007*. Thus, the "as provided in an operating agreement" language means by a method provided in an operating agreement. When used as a conjunction, "as" does not mean "if." The Legislature could certainly have written §509 differently to achieve the result reached by the Court of Appeals in this case. If the Legislature intended to allow *implied* withdrawal and meant merely to require that the power to withdraw be provided in an operating agreement, it would have used the word "if" or some other language besides the "as provided" language.

In 1997, the Legislature restricted voluntary withdrawal by deleting the statutory procedure to withdraw from §509. The amended §509 provides that a member may withdraw "only as provided in an operating agreement." The 1997 amendment did not change the "as provided" language to "if provided" and the meaning of the "as provided in an operating agreement" phrase did not change. The word "as" still operates as a subordinating conjunction

meaning "according to the way." Therefore, §509 still refers to a method provided in an operating agreement. The Legislature added the adverb "only" to emphasize that a member may voluntarily withdraw solely by a method set out in an operating agreement.

This interpretation of §509 is also entirely consistent with this Court's discussion of comparable language in *Midland Cogeneration Venture Ltd Partnership v Naftaly*, 489 Mich 83; 803 NW2d 674 (2011). In that case, the Court was called upon to interpret Art 6, § 28 of the Michigan Constitution, which provides that "[a]ll final decisions …of any administrative officer or agency…which are judicial or quasi-judicial and affect private rights…shall be subject to direct review by the courts *as provided by law*." (emphasis added). A section of Michigan's General Property Tax Act, MCL 211.34c(6), provided that appeals from the State Tax Commission were not permitted and the question presented to the Court in *Midland* was whether this statute was constitutional. The Attorney General, in defending the constitutionality of this statute, argued that the "as provided by law" language in art 6, §28 extended authority to the Legislature to abrogate appeal rights. The challengers of the statute, however, argued that the "as provided by law" language had to be more narrowly confined to the mechanisms for taking an appeal.

This Court agreed with the plaintiff challengers and interpreted the "as provided by law" language as outlining the power of the Legislature to define the mechanics for taking an appeal, *i.e.* the "how" and the "when." *Id,* at 94-95. The Court held:

> "…the phrase 'as provided by law' in art 6, § 28 does not grant the Legislature the authority to circumvent the protections the section guarantees. If it did, those protections would lose their strength because the Legislature could render the entire provision mere surplusage.

The Court ruled in *Midland* that the statutory language was unconstitutional because it did more than define the mechanics for taking an appeal; the Legislature could not eradicate a person's right to an appeal in reliance on the "as provided by law" language.

Similarly, the "as provided in an operating agreement" language of §509 does not vest power in members to circumvent the process protections §509 guarantees. If it did, managers could circumvent expulsion procedures and explicit restrictions on their authority as the defendants have attempted to do here. The "as provided" language of §509 refers to a LLC's members' ability to dictate the mechanics of voluntary withdrawal in an operating agreement and, unless followed, a member cannot be *deemed* to have voluntarily withdrawn.

D. Courts around the country have rejected the Court of Appeals' concept of implied withdrawal of ownership in a LLC.

As noted above, the issue presented here is one of first impression in this Court. There are, however, several cases from around the country that have addressed comparable questions. For example, in *Implants Int'l Ltd v Implants Int'l N America*, *LLC*, 2008 WL 4104477 (ED Mich), a federal court sitting in Michigan rejected the Court of Appeal's approach and held that the "as provided" language of §509(1) refers to the mechanics of withdrawal. The dispositive issue presented to the court in *Implants* was whether a member of a LLC validly withdrew from the company under §509. The plaintiff argued that the member in question withdrew by providing a written notice of resignation and other acts indicating his desire to voluntarily withdraw from the LLC. The court held that the member did not withdraw because he failed to satisfy the conditions of withdrawal set forth in the Operating Agreement, including obtaining the consent of the managers.

In an issue of first impression in Maine, the Supreme Judicial Court in *Bell v Walton*, 861 A2d 687, 2004 ME 146 (2004), resolved a dispute between two owners over whether a member

had voluntarily withdrawn from a LLC. One owner (Bell) sued another owner (Walton) for breach of fiduciary duties. Walton asserted that Bell had abandoned his duties with the LLC and that by his conduct Bell had impliedly withdrawn his membership in the LLC. The Maine LLC statute provided that a member could voluntarily withdraw by giving a 30 day written notice to the other members unless the operating agreement or articles provided otherwise. The court found that there was no alternate means of withdrawing in the articles of incorporation or an operating agreement. The articles of organization did not address withdrawal and there was no operating agreement in place, and therefore the court concluded that "the statutory default rule controlled." *Bell*, at 688.

The *Bell* court rejected a policy of implied withdrawal and held that strict compliance with statutory requirements was necessary to effectuate a member's voluntary withdrawal from a LLC. See *Bell*, at 689 n 3 ("Because we hold that strict compliance with the statutory written notice requirement was necessary to effectuate Bell's withdrawal…we need not address the parties' arguments as to whether (1) Bell's conduct was sufficient to evidence a withdrawal, and (2) Walton waived his right to notice.") Bell never tendered written notice of withdrawal and therefore the court concluded that he had not voluntarily withdrawn. The same is true in this case involving Mr. Altobelli.

Like Maine's high court in *Bell*, courts in other states have similarly rejected the Court of Appeals holding of implied withdrawal from a LLC. New York is one example. In *Sealy v Clifton, LLC*, 34 Misc3d 266; 933 NYS2d 805 (2011), *affirmed* 106 AD3d 981, 966 NYS2d 454 (2013)**,** Sealy, a member of a LLC, brought an action to wind up the affairs of the company. The administrator of a decedent member opposed the action, claiming that Sealy "quit" and impliedly withdrew by not participating or contributing to the company for approximately ten years.

The court in *Sealy* concluded there was no voluntary withdrawal because there was no evidence that Sealy withdrew in compliance with the LLC statute. See also *Mitchell, Brewer, Richardson, Adams, Burge & Boughman, PLLC v Brewer, et al,* 705 SE2d 757, 771-772 (NC App 2011) (No withdrawal available where firm had no articles of incorporation or operating agreement providing for withdrawal); *Klein v 599 Eleventh Ave Co, LLC,* 14 Misc 3d 1211, 836 NYS2d 486 (2006) ("Thus, under the statute, a member may withdraw from a limited liability company only as provided in its operating agreement. If the operating agreement is silent, a member may not withdraw prior to the dissolution of the company.").

E. The Court of Appeals' concept of implied withdrawal undermines bright line rules of law governing ownership in a LLC and introduces a whole new level of uncertainty into an area of law that demands certainty and predictability.

Ownership in an LLC should not hinge on a protracted legal battle where delay could well destroy the legal interest being litigated. The *Bell* court explained that it is in the best interests of all parties involved in a LLC that there be consistency and certainty in determining something as important as the withdrawal of an owner:

> In a case such as this one, in which it is disputed whether there has been a withdrawal, the notice requirement also *protects members against false or unfounded claims of withdrawal*. A false or unfounded claim that a member had withdrawn could improperly deprive that member of his or her rights to any distribution, threaten usurpation of the member's management powers, and deprive the member of the fiduciary duties owed by other members…Moreover, the written notice requirement leaves room for members to attempt to resolve informally any differences they may have before resorting to the formal withdrawal process. The opportunity for informal resolution would be at risk *if members could unilaterally deem another member to have withdrawn*.

Bell, at 689 (emphasis added).

As the *Bell* court stated, "there is no apparent reason to engraft a judicially created doctrine" of *implied* withdrawal on an unambiguous statutory scheme that provides "bright line" rules on determining the status of ownership in a LLC.

These cases regarding withdrawal serve to highlight why the Court of Appeals decision in this case is significant enough to demand the full attention of this Court. According to the Court of Appeals, the Legislature did not require that the members of a LLC insert any "procedural steps" in an operating agreement to govern how to voluntarily withdraw because to do so "forces an LLC to insert something into its operating agreement that perhaps none of its members may find desirous." Opinion (Exhibit 1), at 13. The Court of Appeals was wrong. By its chosen words in §509, the Legislature found it "desirous" to provide certainty on the question of whether a member did or did not voluntarily withdraw from a LLC. The Legislature did so by providing that a member may withdraw "only as provided in an operating agreement," or, in the case of an agreement governed by the 1993 LLCA, by giving advance written notice to the LLC and the other members. Under the Court of Appeals analysis of §509, the withdrawal of a member of a LLC will not be governed by the specific provisions the owners decide to include in an operating agreement. Instead, whether a member has "voluntarily" withdrawn from a LCC will become an issue for a jury to decide whenever the parties can provide conflicting testimony on whether a member "voluntarily" gave up his/her ownership interest.

The LLCA as a whole requires certainty in determining membership status and the Court of Appeals theory of *implied* withdrawal contradicts the Act by introducing uncertainty in membership status. The LLCA requires that everyone know who the members are at any given moment because important matters are determined by the members. The right to vote depends on membership status and the LLCA throughout provides voting by members as a mechanism to make decisions. *See e.g.* MCL 450.4403 (selection of managers) and MCL 450.4502 (members vote on dissolution, proposed mergers, proposed amendments to articles, the sale of assets and transactions involving conflicts of interest of managers). All actions requiring a vote of the

members require that there be no uncertainty or dispute over whether a person is or is not a member, otherwise the validity of all decisions made by the members in the interim is placed into question.

Dissolution provisions also demand certainty in determining member status. The original version of the LLCA triggered dissolution upon withdrawal of a member, unless a majority of the members voted to continue the business within 90 days of the date of withdrawal. See 1993 version of MCL 450.4801. The automatic dissolution provision required certainty in both the fact of withdrawal and a date of a withdrawal.

The LLCA no longer triggers automatic dissolution upon the withdrawal of a member, but it continues to require that there be no uncertainty or dispute over whether a person is or is not a member. Member status still dictates whether a LLC may be dissolved. A single member may hold veto power over whether a LLC may be dissolved because a LLC may be dissolved by a unanimous vote of the members. MCL 450.4801(c). A single member also has the power to file for judicial dissolution. MCL 450.4802. The LLCA also requires a date certain in order to determine the amount of withdrawal distributions. MCL 450.4305. The Court of Appeals theory of *implied* withdrawal is inconsistent with certainty in membership status contemplated by provisions of the LLCA.[5]

[5] Michigan partnership statutes similarly reject implied withdrawal where admission, expulsion and withdrawal from a partnership resemble membership status in a LLC. See Revised Uniform Limited Partnership Act, MCL 449.1101 et seq (A person ceases to be a general partner in the event "the general partner withdraws from the limited partnership as provided in section 602" and section 602 states that a "general partner may withdraw from a limited partnership at any time by giving written notice to the other partners." MCL 449.1402 and MCL 449.1602. Under section 603, a limited partner may withdraw by giving 6 months written notice to each general partner. MCL 449.1603.); see also The Uniform Partnership Act where a partner ceases to be a partner and dissolves a partnership by "express will" and not by implication. MCL 449.31.

Customers, clients, employees and other members also need to know who the members of a LLC are at any moment in time. Determining whether a person is a member must not depend on a laborious undertaking decided through litigation or the ingenuity of lawyers trying to make a case for *implied* withdrawal. The Court of Appeal's novel theory of *implied* withdrawal introduces litigation as a mechanism to determine ownership where 5 years of litigation replaces a 5 minute method of withdrawal or a 5 minute vote of the owners as the means to determine whether a person is or is not an owner, and where ownership decisions are transferred from owners to judges and juries who are not owners and who are not entitled to cast a vote on whether to expel an owner. The Court of Appeals ruling undermines certainty in membership principles firmly rooted in the LLCA.

The Court of Appeals' holding fails to recognize that this case involves ownership law, not employment law, and §509 of the LLCA governs ownership and property rights in a LLC. Mr. Altobelli was an owner who possessed ownership rights, not an employee who could be terminated by defendants. The Operating Agreement here explicitly denies defendants the power to unilaterally expel an owner under any set of circumstances, and §509 protects owners from managers who try to do so under the guise of implied withdrawal.

The Court of Appeals set new precedent in this case that undermines the process protections that Michigan statutory law provides to protect a member's property interest from potential bias, prejudice and self-interest of heavy handed managers. The Court of Appeals ruling undermines bright line rules of law on ownership status, contradicts the LLCA and creates much uncertainty in the law.

This application presents an issue of law that has all of the attributes of a case worthy of this Court's attention. This case involves a published decision of the Court of Appeals on a

novel issue of Michigan law addressing an important question regarding an ownership interest in a burgeoning area of law related to limited liability companies. In addition, this case involves a highly dubious interpretation of a statute and a ruling that introduces a level of uncertainty into an area of law that demands certainty and consistency. For all of these reasons, leave to appeal should be granted.

II. THIS COURT SHOULD REVIEW WHETHER THE COURT OF APPEALS ERRED IN "CLARIFYING" WHAT CONDUCT WOULD CONSTITUTE A VOLUNTARY WITHDRAWAL OF AN OWNERSHIP INTEREST UNDER THE OPERATING AGREEMENT.

Quite apart from the Court of Appeals misreading of §509, there is another serious legal error in that Court's analysis of the legal issues presented in this case.

After rejecting Mr. Altobelli's argument based on §509, the panel turned to the question of how a Principal may withdraw from the firm under the terms of the Operating Agreement. The panel noted that §2.29 of the Operating Agreement provided that "a Principal shall be deemed to have voluntarily withdrawn from the Firm upon such Principal's death." Opinion (Exhibit 1), at 14. The panel further cited §2.34 of the Operating Agreement, which sets out two circumstances that constitute voluntarily withdrawal: (1) a Principal who becomes an employee of a professional corporation that is a Principal is "deemed to have voluntarily withdrawn as a Principal" and (2) a professional corporation that is a Principal "may elect by advance written notice . . . to withdraw from the firm."

After referencing these provisions in the Operating Agreement, the panel ruled in its November 4, 2014 opinion:

> Although the circumstances set forth in these provisions constitute a "voluntary withdrawal," the Operating Agreement does not contain any language indicating that these are the *only* circumstances in which a principal may withdraw from the Firm. At the least, the juxtaposition of "*[a] Principal may voluntarily withdraw from the firm at*

> *any time"* with the three specified circumstances set forth above makes the agreement ambiguous on that point.

Opinion (Exhibit 1), at 14 (emphasis in original).

The panel, therefore, found that the Operating Agreement was ambiguous on the question as to how a Principal was to withdraw his/her ownership interest. After determining that such an ambiguity existed, the Court of Appeals immediately chose to resolve that ambiguity: "We therefore turn to the dictionary to clarify the definition of the term 'voluntary'" *Id*.

The Court of Appeals decision to "clarify" the language of the Operating Agreement with respect to voluntary withdrawal to eliminate ambiguities in that document was entirely inappropriate under Michigan law. As this Court clearly expressed in *Klapp v United Ins Group Agency, Inc.*, 468 Mich 459, 469; 663 NW2d 447 (2003):

> It is well settled that the meaning of an ambiguous contract is a question of fact that must be decided by the jury. *Hewett Grocery Co v Biddle Purchasing Co*, 289 Mich 225, 236; 286 NW 221 (1939). "'Where a contract is to be construed by its terms alone, it is the duty of the court to interpret it; but where its meaning is obscure and its construction depends upon other and extrinsic facts in connection with what is written, the question of interpretation should be submitted to the jury, under proper instructions.'" *O'Connor v March Automatic Irrigation Co*, 242 Mich 204, 210; 242 NW 784 (1928).

Klapp makes clear that, after determining that the Operating Agreement was ambiguous on how a Principal may voluntarily withdraw, the Court of Appeals seriously overstepped its role by resolving or "clarifying" that ambiguity. It is not the function of a court to interpret the meaning of an ambiguous contract. As *Klapp* confirms, it is the trier of fact that must determine the meaning of an ambiguous contract.

Since the Court of Appeals did not have the authority to resolve the meaning of a contract that it found to be ambiguous, the panel's entire discussion of what would constitute "voluntary" withdrawal under the terms of the Operating Agreement represents error that requires reversal.

RELIEF REQUESTED

Based on the foregoing, plaintiff/cross-appellant, Dean Altobelli, respectfully requests that this Court grant his application for leave to appeal and give full consideration to the legal issue presented here. In the alternative, plaintiff/cross-appellant requests that this Court summarily reverse the Court of Appeals November 4, 2014 decision insofar as that decision found that a question of fact remained on whether Mr. Altobelli had withdrawn from the LLC "as provided in an operating agreement."

MARK GRANZOTO, P.C.

/s/ Mark Granzotto
MARK GRANZOTTO (31492)
Attorney for Plaintiff/Cross-Appellant
2684 Eleven Mile Road, Suite 100
Berkley, MI 48072
(248) 546-4649

/s/ Deal Altobelli
DEAN ALTOBELLI (P48727)
Attorney for Plaintiff/Cross-Appellant
1720 6th Avenue South
Escanaba, MI 49829
(517) 281-0141

Dated: January 12, 2015

CERTIFICATE OF E-SERVICE

I hereby certify that on January 12, 2015, I electronically filed the foregoing pleading using the TruFiling system which will send notification of such filing to Thomas Kienbaum.

I hereby certify that on January 12, 2015, I mailed a copy of the foregoing pleading to John R. Oostema, 100 Monroe Center St NW, Grand Rapids, MI 49503.

/s/ Peggy McGregor